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Amendment

TC 2824

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REMARKS:

☐ Urgent ☐ For your review ☒ Reply ASAP ☐ Please comment

Application Number: 10/641,768

Filing date: August 14, 2003

First named inventor: Burke, Peter A.

Attorney docket number: 03-0006

Transmitted herewith for filing via facsimile:

- Amendment in response to the Office Action dated January 07, 2005.

Pursuant to 37 C.F.R. 1.8, I hereby certify that this correspondence is being transmitted by facsimile to the U.S. Patent and Trademark Office on the date indicated below:

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Peter A. Burke et al.)
) Group Art Unit: 2824
)
Serial No.: 10/641,768) Examiner: Christian D. Wilson
)
Filed: August 14, 2003) Atty. Docket No.: 03-0006
)
For: Method and Structure for Creating)
Ultra Low Resistance Damascene Copper)
Wiring)
)

RESPONSE TO OFFICIAL ACTION
Restriction/Election Requirement

Hon. Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This response is presented to the Office Action mailed January 7, 2005, wherein the Examiner required restriction pursuant to 35 U.S.C. §121. Election is hereby made, *with traverse*, to prosecute Group I, method claims 1-17.

Remarks/Arguments

Reconsideration of the restriction is respectfully requested. Restriction is not required by 35 U.S.C. §121, as suggested in the Office Action. Congress wisely granted the *discretion* to restrict applications. According to 35 U.S.C. §121 "... the Commissioner *may* require the application to be restricted...." (emphasis added).

Furthermore, MPEP § 803 lists two criteria that must be present for restriction to be proper:

- 1) The inventions must be independent or distinct as claimed; and
- 2) There must be a serious burden on the examiner if restriction is required.

In searching the Species I claims, the class and subclass for the Species II claims will undoubtedly be searched, to ensure that no relevant art is overlooked. For this reason there is no significant burden on the examiner, and certainly no serious burden as required by MPEP §121.

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